

DECISION



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**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-200378

DATE: January 22, 1981

MATTER OF: Sperry-Univac

[Protest of Bid Rejection as Nonresponsive]
DIGEST:

1. Bid which is stamped "PROPRIETARY" is nonresponsive since stamp restricts public disclosure of price and gives bidder opportunity, after bid opening, of accepting or refusing award. Non-responsiveness may not be cured through bid correction.
2. Protest alleging deficiencies in IFB evaluation formula and that contracting officer and his supervisor offered contradictory interpretations of evaluation criteria is dismissed as academic where only one responsive bid was received and evaluation formula was not for application.

Sperry-Univac has protested under invitation for bids (IFB) No. DAAD07-80-B-0096 which was issued by the United States Army, White Sands Missile Range. The IFB was for the lease and maintenance, with options to purchase, of two magnetic tape subsystems and one disk storage subsystem. Sperry-Univac protests that its bid was improperly rejected as nonresponsive by the contracting officer. Sperry-Univac also contends that the evaluation scheme set forth in the IFB was improper since it did not conform to General Services Administration (GSA) guidelines on evaluation of cost in the selection of automatic data processing systems. Furthermore, Sperry-Univac alleges that oral explanations it received from the contracting officer before bid opening regarding application of the evaluation criteria were directly contradicted by the contracting officer's supervisor at the bid opening.

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The contracting officer determined Sperry-Univac's bid to be nonresponsive because the pricing section of Sperry-Univac's bid had been stamped:

"PROPRIETARY/This information is proprietary and may be used in evaluating the proposal. It should not be released or disclosed in whole or in part outside the Government."

After bids were opened, a Sperry-Univac representative orally authorized disclosure of Sperry-Univac's pricing information. Subsequently, the contracting officer rejected the bid as nonresponsive.

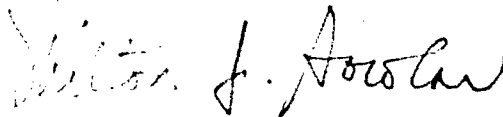
The contracting officer properly rejected Sperry-Univac's bid. In formally advertised procurements, all bids must be publicly opened to protect the public interest and to prevent any form of fraud, favoritism or partiality. The basis upon which a bid is submitted is determined at the time bids are opened. To allow a bidder to change the terms of its bid after bids have been opened would be tantamount to allowing the bidder an opportunity to submit a second bid. To permit a bidder to decide after bids have been opened and all prices (but its own) exposed gives that bidder an option not given any other bidder to accept or reject an award. If the bidder has submitted the lowest bid, the bidder may, at its whim, then choose whether to receive award by refusing or permitting removal of the restrictive legend. See Computer Network Corporation, 55 Comp. Gen. 445 (1975), 75-2 CPD 297, and cases cited therein. Thus, Sperry-Univac's offer to withdraw the restriction after bids were opened has no bearing on the responsiveness of its bid. Since the stamp on Sperry-Univac's bid restricted disclosure of Sperry-Univac's bid price, the bid was nonresponsive. Computer Network Corporation, supra.

Sperry-Univac argues that the restriction was mistakenly stamped on the bid. Sperry-Univac contends that the restrictive legend was meant for use only with proposals submitted in negotiated procurements. Therefore, Sperry-Univac argues that it should have been allowed to correct this "clerical error" under mistake-in-bid procedures rather than being rejected as nonresponsive. We do not agree since we have held

that a nonresponsive bid may not be cured through bid correction. See W. S. Jenks & Son, B-195861, November 26, 1979, 79-2 CPD 373, and cases cited therein. Accordingly, the contracting officer properly rejected Sperry-Univac's bid as nonresponsive and did not allow correction.

Insofar as Sperry-Univac's protest concerns an allegedly improper evaluation scheme and contradictory interpretations thereof given by the contracting officer and his supervisor, we will not consider this issue, although timely raised, nor any criticisms of the IFB's evaluation scheme because we consider these issues to be academic. When bids were opened, only three bids were received. Two of the bids had restrictive legends prohibiting public disclosure of their contents. As discussed previously, these bids were properly rejected as nonresponsive by the contracting officer. Thus, only the bid submitted by Amperif Corporation was responsive to the IFB. The evaluation scheme to which Sperry-Univac's protest is directed would only be used to determine which of several bids represented the most favorable bid to the Government in the event more than one responsive bid was received. Since only one responsive bid was received, the evaluation formula was not to be applied, and award to Amperif would be proper as long as its bid price is determined to be reasonable--a matter within the contracting officer's discretion. Schottel of America, Inc., B-190546, March 21, 1978, 78-1 CPD 220. Thus, this portion of Sperry-Univac's protest is academic and we will not consider it on its merits. McNab Incorporated, B-195105, January 29, 1980, 80-1 CPD 78.

The protest is denied in part and dismissed in part.



For the Comptroller General
of the United States

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